

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

Mark Anthony Ortega	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Case No. 5:25-CV-00865-JKP-HJB
	§	
TriSMART Solar, LLC, and	§	
Jose Manuel Turrubiates	§	
	§	
<i>Defendants</i>	§	

**DEFENDANT TRISMA RT SOLAR, LLC’S MOTION TO DESIGNATE
RESPONSIBLE THIRD PARTIES**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, TRISMA RT SOLAR, LLC, Defendant in the above-entitled and number cause, who files the following MOTION TO DESIGNATE RESPONSIBLE THIRD PARTIES pursuant to TEX. CIV. PRAC. & REM. CODE § 33.004, and in support thereof would respectfully show as follows:

I. Factual Background

1. This case arises from allegations that calls were made to Plaintiff in violation of various anti-telemarketing laws and regulations.
2. Plaintiff alleges that “on April 22, 2025, at approximately 11:55 AM” he received a call from phone number 210-437-1892. *See* ECF No. 19 at ¶ 21. Plaintiff alleges that the call was made by an unnamed agent of a company called “Smart Home Solar.” *See* ECF No. 19 at ¶¶ 21-23.
3. Plaintiff alleges that he received a call “on April 22, 2025, at approximately 5:14 PM from an individual who identified himself as ‘Joe,’” who Plaintiff has now alleged to be Defendant Jose Manuel Turrubiates. *See* ECF No. 19 at ¶ 23.

4. Plaintiff alleges that he received a call from phone number 210-340-8610 “[o]n June 17, 2025, at approximately 4:19 PM” from “‘Ed’ from ‘Smart Home Solar.’” *See* ECF No. 19 at ¶ 25.

5. Plaintiff has alleged that these calls violate various anti-telemarketing statutes. If Plaintiff’s allegations are true, then “Smart Home Solar” and its employees or agents, including “Joe,” Jose Manuel Turrubiates, and/or “Ed,” are responsible for any violations and any resulting damages.

II. Legal Standard

6. A defendant is entitled to have a trier of fact determine the percentage of responsibility born by each claimant, defendant, settling person, or designated responsible third party. TEX. CIV. PRAC. & REM. CODE § 33.003(a). A responsible third party is any person who is alleged to have wrongfully caused or contributed to the harm for which recovery of damages is sought. TEX. CIV. PRAC. & REM. CODE § 33.011(6).

7. A defendant designates a responsible third party by filing a motion for leave under TEX. CIV. PRAC. & REM. CODE § 33.004. A defendant is only required to “plead sufficient facts concerning the alleged responsibility of the person to satisfy the pleading requirements of the Texas Rules of Civil Procedure.” TEX. CIV. PRAC. & REM. CODE § 33.004(g).

8. Absent a timely objection, leave must be granted. TEX. CIV. PRAC. & REM. CODE § 33.004(f). It is the burden of the objecting party to establish that Defendant did not plead sufficient facts to satisfy the pleading requirements of the Texas Rules of Civil Procedure.

**III. Smart Home Solar, Joe, Jose Manuel Turrubiantes, and Ed
are Responsible Third Parties**

9. Plaintiff alleged that he has received multiple calls from agents of “Smart Home Solar,” including specifically “Joe,” Jose Manuel Turrubiantes, and “Ed.”¹ *See* ECF No. 19 at ¶¶ 21-25.

10. Plaintiff has alleged that the calls he received from agents of “Smart Home Solar,” including specifically from “Joe,” Jose Manuel Turrubiantes, and “Ed,” violate various anti-telemarketing laws. *See* generally ECF No. 19 at ¶¶ 28-64.

11. Plaintiff has alleged that these calls caused a harm for which Plaintiff seeks recovery of damages. *See Id.*

12. If these alleged calls were made, “Smart Home Solar” and its agents, including “Joe,” Jose Manuel Turrubiantes, and “Ed,” made them. As such, “Smart Home Solar,” “Joe,” Jose Manuel Turrubiantes, and “Ed” are “alleged to have caused or contributed to causing in any way the harm for which recovery of damages is sought.” Accordingly, “Smart Home Solar,” “Joe,” Jose Manuel Turrubiantes, and “Ed” are Responsible Third Parties. *See* TEX. CIV. PRAC. & REM. CODE §§ 33.004 and 33.011(6).

13. Plaintiff amended his Original Complaint to add Jose Manuel Turrubiantes as a Defendant. *See* ECF No. 19 at ¶ 13. At the time of filing of this Motion, Plaintiff has not served Jose Manuel Turrubiantes. Additionally, while Plaintiff alleged that “Joe” is Jose Manuel Turrubiantes, this has not been proven. Accordingly, out of an abundance of caution, Defendant has still named “Joe” and Jose Manuel Turrubiantes as Responsible Third Parties.

¹ Because it has not been confirmed through discovery that the “Joe” referenced in Plaintiff’s Complaint and Jose Manuel Turrubiantes referenced in Plaintiff’s discovery requests are the same person, Defendant seeks to designate both at this time.

14. Defendant therefore moves that “Smart Home Solar,” “Joe,” Jose Manuel Turrubiates, and “Ed” be designated as Responsible Third Parties.

**IV. Defendant has Met the Procedural Requirements
to Designate Responsible Third Parties**

15. Defendant files this Motion on or before the 60th day before the trial date. *See* TEX. CIV. PRAC. & REM. CODE § 33.004(a).

16. Defendant files this motion before the deadline set in this Court’s scheduling order. *See* ECF No. 16 at ¶ 3.

17. Defendant files this Motion before the statute of limitations on Plaintiff’s claims against the designees has expired. *See* TEX. CIV. PRAC. & REM. CODE §§ 33.004(d).

18. Defendant timely disclosed information known about “Smart Home Solar,” “Joe,” and “Ed” in its Initial Disclosures on October 28, 2025. *See* TEX. CIV. PRAC. & REM. CODE § 33.004(d).² Defendant supplemented with information known about Jose Manuel Turrubiates in its First Amended Initial Disclosures on November 10, 2025, prior to filing this Motion.

19. Defendant has pled sufficient facts concerning the alleged responsibility of the designees to satisfy the pleading requirements of the Texas Rules of Civil Procedure. TEX. CIV. PRAC. & REM. CODE § 33.004(g).

V. Prayer

For these reasons, Defendant respectfully requests that the Court grant this Motion, designate Smart Home Solar, Joe (Last Name Unknown), Jose Manuel Turrubiates, and Ed (Last

² The statute refers to the initial disclosures required by the Texas Rules of Civil Procedure. Since Plaintiff filed his suit in Federal Court, Defendant timely identified and provided all known contact information for these Responsible Third Parties in its Rule 26 Initial Disclosures and amendments thereto.

Name Unknown) as Responsible Third Parties, and grant Defendant any additional relief the Court determines is appropriate.

Respectfully submitted,

TRISMART SOLAR, LLC

/s/ Timothy R. Allen

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CERTIFICATE OF CONFERENCE

This is to certify that I have conferred with the Plaintiff regarding the relief requested in this Motion. Plaintiff did not agree with the designation, so he was opposed.

/s/ Timothy R. Allen

TIMOTHY R. ALLEN

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record and *pro se* parties pursuant to Federal Rule of Civil Procedure 5(b)(2) on December 15, 2025.

/s/ Timothy R. Allen

TIMOTHY R. ALLEN